

ORIGINAL

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Attorneys for Defendant CONSUMER DIRECT OF
AMERICA, a Nevada Corporation

HZ

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEITH A. FINK & ASSOCIATES, a sole
proprietorship dba Keith A. Fink & Associates,

Plaintiffs,

vs.

CONSUMER DIRECT OF AMERICA, a
Nevada Corporation; FREEDOM MORTGAGE
CORPORATION dba OCEAN WEST
FUNDING; MICHAEL A. BARRON, an
individual; JOSEPH COSIO-BARRON, an
individual; WAYNE BAILEY, an individual;
PAUL GRADY, an individual; TERRY
VICKERY, an individual, and DOES 1 through
50, inclusive,

Defendants.

CASE NO. BC327620
UNLIMITED CIVIL CASE

**DEFENDANT CONSUMER DIRECT OF
AMERICA'S NOTICE OF REMOVAL OF
ACTION FROM THE LOS ANGELES
COUNTY SUPERIOR COURT OF THE
STATE OF CALIFORNIA TO THE U.S.
DISTRICT COURT OF NEVADA- LAS
VEGAS (28 U.S.C. § 1441)**

CV-S-05-0304-JCM-RJJ

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL PARTIES AND THEIR
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Consumer Direct of America (hereinafter
"Defendant") hereby files their Notice of Removal from State Court to the U.S. District Court of
Nevada- Las Vegas, pursuant to 28 U.S.C. § 1441.

The basis for removal to the U.S. District Court of Nevada is because the instant action
sought to be removed presents diversity of citizenship and therefore diversity jurisdiction
pursuant to 28 U.S.C. § 1332.

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Attorneys for Defendant CONSUMER DIRECT OF
AMERICA, a Nevada Corporation

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BY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

KEITH A. FINK & ASSOCIATES, a sole
proprietorship dba Keith A. Fink & Associates,

Plaintiffs,

vs.

CONSUMER DIRECT OF AMERICA, a
Nevada Corporation; FREEDOM
MORTGAGE CORPORATION dba OCEAN
WEST FUNDING; MICHAEL A. BARRON, an
individual; JOSEPH COSIO-BARRON, an
individual; WAYNE BAILEY, an individual;
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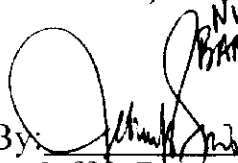
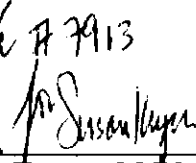
The basis for removal to the U.S. District Court of Nevada is because the instant action
sought to be removed presents diversity of citizenship and therefore diversity jurisdiction
pursuant to 28 U.S.C. § 1332.

On or about February 18, 2005, the instant action was commenced in the Superior Court of the State of California, in the County of Los Angeles, entitled Keith A. Fink & Associates et al. v. Consumer Direct of America, et al., case number BC327620. The date upon which Defendant received a copy of said Complaint in this action was on or about February 5, 2005, when Defendant was served with a copy of said Complaint and a summons from said state court.

This Action is a civil case of which the U.S. District Court of Nevada- Las Vegas, has original jurisdiction under 28 U.S.C. § 1332 in that the amount in controversy exceeds \$75,000.00 and none of the plaintiffs in this case reside in the same state as any of the defendants. As such, there is complete diversity pursuant to the auspices of 28 U.S.C. § 1332. Even though Defendant has recently learned that plaintiff has filed a First Amended Complaint (Defendant has not yet been properly served with this First Amended Complaint but has only seen a copy of this First Amended Complaint), both the original Complaint and the First Amended Complaint establish diversity jurisdiction. Plaintiff's Complaint against defendants seek to prevent federal jurisdiction based on diversity of citizenship by alleging that some of the defendants are "authorized to conduct business" in the State of California. This is simply a sham to avoid federal jurisdiction. It is well established that the basic requirement in diversity cases is that all plaintiffs be of different citizenship than all defendants; any instance of common citizenship prevents federal diversity jurisdiction. For diversity purposes, a person is a citizen of the state in which he or she is domiciled. A corporation is a citizen of the state in which it is incorporated and the state in which it has its principal place of business. (28 U.S.C. § 1332). This case therefore establishes the complete diversity of citizenship required to maintain a federal lawsuit under 28 U.S.C. § 1332.

DATED this 7th day of March, 2005.

MCNEIL, TROPP & BRAUN, LLP

By:   ^{PNV} # 7913
 Jeff I. Braun, Esq. - 8970
 Susan K. Kuper, Esq. - 9091
 Attorneys for Defendant CONSUMER
 DIRECT OF AMERICA, a Nevada
 Corporation

CERTIFICATE OF SERVICE

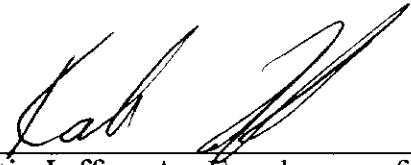
I hereby certify that on the 7TH day of March, 2005, I deposited in the United State Mail, postage prepaid, a true and correct copy of the above and foregoing **DEFENDANT CONSUMER DIRECT OF AMERICA'S NOTICE OF REMOVAL OF ACTION FROM THE LOS ANGELES COUNTY SUPERIOR COURT OF THE STATE OF CALIFORNIA TO THE U.S. DISTRICT COURT OF NEVADA- LAS VEGAS (28 U.S.C. § 1441)** to the following parties:

Keith A. Fink, Esq.
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(661) 313-2893



Katia Ioffe - An Employee of McNeil, Tropp & Braun

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7
 8 Attorneys for Plaintiff
 9 KEITH A. FINK & ASSOCIATES,
 a sole proprietorship dba KEITH A. FINK & ASSOCIATES

CONFORMED COPY
 OF ORIGINAL FILED
 Los Angeles Superior Court

JAN 21 2005

John A. Clarke, Executive Officer/Clerk
 By _____, Deputy
 J. SUNGA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

13 KEITH A. FINK & ASSOCIATES, a sole
 14 proprietorship dba Keith A. Fink & Associates,

15 Plaintiff,

16 vs.

17 CONSUMER DIRECT OF AMERICA, a
 Nevada Corporation; MICHAEL A. BARRON,
 an individual; JOSEPH COSIO-BARRON, an
 18 individual; WAYNE BAILEY, an individual;
 19 PAUL GRADY, an individual; TERRY
 VICKERY, an individual, and DOES 1 through
 20 50, inclusive,

21 Defendants

CASE NO. 80327620

COMPLAINT FOR:

- (1) BREACH OF CONTRACT
- (2) BREACH OF ORAL CONTRACT
- (3) BREACH OF IMPLIED IN FACT CONTRACT
- (4) BREACH OF IMPLIED IN LAW CONTRACT
- (5) VIOLATION OF CIVIL CODE §§ 1709 AND 1710 (DECEIT)
- (6) VIOLATION OF CIVIL CODE § 1572 (ACTUAL FRAUD)
- (7) VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.
- (8) OPEN BOOK ACCOUNTING

[Jury Trial Demanded]

27 Plaintiff and KEITH A. FINK & ASSOCIATES, a sole proprietorship dba Keith A. Fink &
 28

COMPLAINT

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1 Associates heroby alleges as follows:

2 VENUE AND PARTIES

3 1. Plaintiff KETH A. FINK & ASSOCIATES, a sole proprietorship dba Keith A. Fink &
4 Associates (hereafter "FINK LAW FIRM" and/or "Plaintiff") is and was, and all times relevant hereto,
5 a sole proprietorship doing business as Keith A. Fink & Associates, and located in and doing business
6 in the County of Los Angeles, State of California.

7 3. Defendant CONSUMER DIRECT OF AMERICA (hereinafter "CDA" and/or
8 "Defendants") is, and at all times relevant herein has been, a Nevada Corporation which is authorized
9 to conduct business in the State of California.

10 4. Defendant MICHAEL A. BARRON (hereinafter "Mr. BARRON" and/or "Defendants")
11 is, and at all times relevant herein has been, an individual residing in Clark County, Nevada and is the
12 Chairman and Chief Executive Officer of CDA.

13 5. Defendant PAUL GRADY (hereinafter "MR. GRADY" and/or "Defendants") is, and at
14 all times relevant herein has been, an individual residing in Clark County, Nevada and is the Executive
15 Vice President of CDA.

16 6. Defendant JOSEPH COSIO-BARRON (hereinafter "MR. COSIO-BARRON" and/or
17 "Defendants") is, and at all times relevant herein has been, an individual residing in Clark County,
18 Nevada and is CDA's Corporate Counsel and an agent of CDA. Plaintiff is informed, believes, and on
19 that basis alleges that MR. COSIO-BARRON maintains a residence in San Francisco, California.

20 7. Defendant WAYNE BAILEY (hereinafter "MR. BAILEY" and/or "Defendants") is, and
21 at all times relevant herein has been, an individual residing in the State of Utah and is the President
22 and the Chief Financial Officer of CDA.

23 8. Defendant TERRY VICKERY (hereinafter "MR. VICKERY" and/or "Defendants") is,
24 and at all times relevant herein has been, an individual residing in Clark County, Nevada and Colorado
25 and is a managing agent/employee of CDA.

26 9. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
27 associate or otherwise, of Defendants DOES 1 through 50 (hereinafter "DOES" and/or "Defendants").
28 inclusive, and therefore sues said Does by such fictitious names. Plaintiff will seek leave of Court to

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1 amend this Complaint to show the true names and capacities of such DOES when the same has been
 2 ascertained. Plaintiff is informed, believes, and thereupon alleges that each of the fictitiously named
 3 Defendants are responsible to Plaintiff for the injuries suffered and alleged herein, or are subject to the
 4 jurisdiction of the Court as a necessary party for the relief herein requested.

5 10. Plaintiff is informed, believes, and thereupon alleges that each DOE is now, and
 6 was at all times mentioned herein, the agent, principal, partner, joint venturer, employee or alter ego of
 7 the remaining Defendants, and that all of the acts and conduct alleged herein were performed within
 8 the course and scope and in the furtherance of such agency, partnership, joint venture, employment or
 9 alter ego relationship.

10 11. Venue is properly laid in this Court as the torts were committed in Los Angeles County,
 11 California and the contracts sued upon was negotiated, executed, and substantially performed in Los
 12 Angeles County, California.

13 FACTUAL ALLEGATIONS

14 12. Plaintiff repeats, re-alleges, and incorporates herein by this reference Paragraphs 1
 15 through 11, as though fully set forth herein.

16 13. $8 + 4 + 12 = 0$. Some things just do not add up. According to CDA, eight law suits
 17 litigated in four states for over twelve months equal zero dollars in legal fees. Suffice to say, Plaintiff
 18 has been defrauded. In furtherance of its expansionist goals, in early 2002, CDA embarked upon a
 19 campaign to acquire small but successful mortgage brokerages around the country and add them to
 20 CDA's nation-wide umbrella of net branches. Defendants seemed to view CDA's expansion as
 21 manifest destiny. In furtherance of this self-sanctioned destiny, Defendants were allegedly not
 22 constrained by cost, contracts, or past promises. Defendants sought the proverbial "something for
 23 nothing" by taking what they wanted without paying for it. Unfortunately for CDA, the law firm which
 24 shielded it from the alleged natural repercussions of Defendants' business practices has done its own
 25 arithmetic. Eight law suits plus zero dollars paid plus scores of empty promises equals this Complaint.

26 14. In late 2003, Defendants found themselves forced to litigate a matter in California
 27 which exposed not only CDA but each instant individual defendant to a thirteen million dollar Cross-
 28 complaint. Convinced that the attorney who filed the complaint for CDA was incompetent to handle

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1 the matter, Defendants looked for more effective counsel to shield them from the massive exposure and
2 to tenaciously prosecute their claims. It is against this back drop that Defendants were introduced to
3 Keith A. Fink ("Mr. Fink") of Keith A. Fink & Associates.

4 15. In November of 2003, CDA filed a lawsuit against Las Vegas Mortgage Company and
5 Raymond and Sheree Williams in Orange County, California. The suit arose from the failed
6 acquisition of Raymond and Sheree Williams' company, Las Vegas Mortgage Company ("LVMC").
7 The Williams cross-complained against CDA, MR. BARRON, MR. GRADY, MR. COSIO-BARRON,
8 MR. BAILEY, and MR. VICKERY for failing to issue unrestricted stock in consideration for acquiring
9 LVMC, as called for by acquisition agreement, and demanded damages totaling thirteen million dollars
10 (\$13,000,000.00).¹ The Cross-complaint was designed to bankrupt CDA and the instant individual
11 defendants. However, when CDA and the individuals asked for help, Plaintiff was there to remedy the
12 situation. Thus began Plaintiff's relationship with Defendants.

13 16. Beginning in or about November 2003 and continuing, Plaintiff first provided legal
14 services to Defendants in defense of the following actions brought by and against Defendants:
15 Consumer Direct of America v. Lending Services Corporation (hereinafter the "Williams Matter") and
16 thereafter Jasperson v. Consumer Direct of America, Inc., (hereinafter the "Jasperson Matter"). In
17 addition, Defendants sought Plaintiff's legal advice on various employment matters from time to time
18 and Plaintiff provided Defendants with the requested advice and legal work. This work included
19 reviewing employment agreements and the employee handbook and making suggestions as to
20 recommended revisions.

21 17. On or about December 30, 2003, Plaintiff and CDA entered into a written fee
22 agreement wherein CDA agreed to pay Plaintiff for its legal services. The essential terms of the Fee
23 Agreement were: (1) Plaintiff "agree[s] to provide those legal services that are reasonably required to
24 represent [Defendants] and shall take reasonable steps to keep [Defendants] informed of progress and
25 to respond to [Defendants'] inquiries," (2) "[Mr. Fink's] billing rate is \$400 per hour. Associates bill
26 at the rate of \$260 per hour," and (3) "All bills are due on the 10th day after their date and are to be paid

27
28 ¹The Williams family filed two related cases in Clark County, Nevada under case numbers
A467140 and A467141. These matters were successfully resolved in the same settlement.

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1 by [Defendants] on or before that date." Defendants were permitted to pay Plaintiff's bills in either
 2 cash or, in lieu thereof, issue Plaintiff stock in CDA with said issuance equaling the total sum of money
 3 owed. During the course of the representation, MR. BARRON became concerned about the likely
 4 dilution of existing shareholders' percentage ownership of the company if Plaintiff were paid in stock.
 5 Consequently, Plaintiff offered to accept cash only as payment instead of stock. Defendants accepted
 6 this offer and the Fee Agreement was amended accordingly.

7 18. Per the parties Fee Agreement, Defendants were obligated to pay all monies due to
 8 Plaintiff within ten days of the date of the billing statement. Per the Fee Agreement, Defendant also
 9 had ten days in which to raise questions regarding the bills, otherwise, if no questions were raised,
 10 Plaintiff would rely on this silence as Defendants' acceptance of the bill and account as stated.

11 19. Throughout the representation, Plaintiff provided Defendants with monthly billing
 12 statements describing the legal services Plaintiff performed on Defendants' various matters. Not once
 13 did Defendants complain that any of the work performed by Plaintiff was unnecessary or that the time
 14 Plaintiff spent on a particular task was excessive. In fact, Defendants repeatedly praised Plaintiff for
 15 Plaintiff's good work on behalf of Defendants giving Mr. Fink such descriptive nicknames as "Chief,"
 16 "Bulldog," "CDA's Red Adair," "the Fifth Head of CDA," "Mike Barron's Wingman" and "Assassin."

17 19. Plaintiff's effective representation in the Williams Matter saved CDA approximately
 18 2.4 million shares of stock totaling approximately \$1,400,000.00. This unqualified success led
 19 Defendants to look to Plaintiff for all of their litigation needs, no matter the size, subject matter,
 20 jurisdiction, or venue.

21 20. Just prior to the conclusion of the Williams Matter, Defendants asked Plaintiff to
 22 substitute into the "Jasperson Matter." Both CDA and MR. BARRON are named as Defendants in
 23 that action. The Jasperson Matter is strikingly similar to the Williams Matter. CDA acquired the
 24 Jasperson's business assets and hired the Jaspersons to manage a branch of CDA in Nevada.² The
 25 relationship quickly deteriorated when CDA allegedly failed to deliver the freely trading CDA stock to
 26 pay for the assets as called for in the acquisition agreement. Plaintiff was admitted to the Nevada Bar

27
 28 ²CDA's branch offices operate throughout the country under the name Consumer Direct
 Lending ("CDL").

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1 *pro hac vice* in order to fight for CDA and MR. BARRON.

2 21. Thrilled with Plaintiff's representation and results, Defendants repeatedly brought all of
3 their litigation matters to Plaintiff, regardless of size. Plaintiff was retained in another California
4 action entitled GE Business Productivity Solutions v. Consumer Direct of America ("GE Matter").
5 The GE Matter revolved around an internet bill which CDA allegedly incurred but never paid.
6 Plaintiff resolved the matter to Defendants' satisfaction. Plaintiff was also asked to represent CDA's
7 interests in Cal Realty v. Keane et al.

8 22. CDA also retained Plaintiff to represent Ocean West Funding, a California corporation
9 CDA was then negotiating to purchase, in Citicorp Mortgage v. Ocean West Enterprises.³ CDA
10 recommended Plaintiff to Ocean West Funding to represent Ocean West Funding in lawsuits pending
11 in California and Illinois based upon Plaintiff's past performance on CDA's behalf and CDA
12 guaranteed that Plaintiff's legal fees would be paid.

13 23. Despite Plaintiff's string of successes and legal services provided, Plaintiff was not
14 compensated in full. Defendants repeatedly promised Plaintiff that full payment would be
15 forthcoming. Based upon these assurances and representations, Plaintiff agreed to represent
16 Defendants in Consumer Direct of America v. Consulting Services, Consulting Services v. Consumer
17 Direct of America, and a related matter entitled Two Barrett Lakes Office Center v. South County
18 Financial Services (hereinafter, collectively the "Consulting Services Matters").

19 24. These suits revolved around the now familiar theme, the acquisition of a smaller
20 mortgage brokerage, the hiring of the target company's principals, and CDA's alleged failure to issue
21 stock as payment for the company or alleged failure to issue freely trading stock for the acquisition.
22 The issue over the proper jurisdiction for the Consulting Services Matters necessitated many motions
23 and scores of hours at a great expense to Plaintiff. Throughout the course of Plaintiff's involvement in
24 the Consulting Services Matters, MR. BARRON and MR. COSTO-BARRON repeatedly promised
25 Plaintiff that Plaintiff would be compensated in full for all of its work.

26 25. With these promises ringing in Mr. Fink's his ears, Plaintiff also agreed to represent
27

28 ³Plaintiff is informed, believes, and on that basis alleges that CDA eventually acquired Ocean West Funding.

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CDA in another federal case entitled Consumer Direct of America v. Ferguson et al. (hereinafter the "Ferguson Matter") and further agreed to defend CDA, MR. BARRON, MR. COSIO-BARRON, and MR. VICKERY in an almost identical action entitled Williamson et al. v. Consumer Direct of America et al. (hereinafter the "Williamson Matter") which was filed in the Western District of North Carolina. In response to the complaint in the Williamson Matter, Plaintiff successfully persuaded a federal judge sitting in the Western District of North Carolina to divest North Carolina of jurisdiction and transfer the matter to the District of Nevada for consolidation with the Ferguson Matter. This victory not only saved CDA the cost of hiring local counsel in North Carolina but ensured that CDA's opposition would have to endure that expense to its severe disadvantage.

26. Throughout the attorney-client relationship, Defendants expressed their extreme satisfaction and confidence in Plaintiff's legal services with jocular praise and jubilant appreciation. Defendants commended Plaintiff for its work ethic, recognizing that Plaintiff worked evenings and weekends and made itself available to Defendants outside of regular business hours.

27. To date, Defendants have incurred over \$300,000.00 in legal fees and costs which they have repeatedly orally promised to pay and repeatedly failed to pay. It seems that Defendants have developed a pattern of promising to pay and failing to deliver (e.g. the Williams Matter, Jasperson Matter, GE Matter, Consulting Services Matters, Ferguson Matter and Williamson Matter). Plaintiff represented Defendants in eight lawsuits, in four states, for over twelve months, and has benefitted by not one dime. It is time for CDA to pay its bills.

FIRST CAUSE OF ACTION

(BREACH OF CONTRACT AGAINST ALL DEFENDANTS AND DOES)

28. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 27, as though fully set forth herein.

29. On or about December 30, 2003, Plaintiff and CDA entered into a written fee agreement wherein CDA agreed to pay Plaintiff for its legal services. The essential terms of the Fee Agreement were: (1) Plaintiff "agree[s] to provide those legal services that are reasonably required to represent [Defendants] and shall take reasonable steps to keep [Defendants] informed of progress and to respond to [Defendants'] inquiries," (2) "[Mr. Fink's] billing rate is \$400 per hour. Associates bill

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1 at the rate of \$260 per hour," and (3) "All bills are due on the 10th day after their date and are to be paid
2 by [Defendants] on or before that date." Defendants were permitted to pay Plaintiff's bills in either
3 cash or, in lieu thereof, issue Plaintiff stock in CDA with said issuance equaling the total sum of
4 money owed. During the course of the representation, MR. BARRON became concerned about the
5 likely dilution of existing shareholders' percentage ownership of the company if Plaintiff were paid in
6 stock. Consequently, Plaintiff offered to accept cash only as payment instead of stock. Defendants
7 accepted this offer and the Fee Agreement was amended accordingly.

8 30. The fee agreement was entered into in connection with the Williams and Jasperson
9 Matters. Plaintiff's services included legal representation of CDA, MR. BARRON, MR. COSIO-
10 BARRON, MR. BAILEY, MR. GRADY and MR. VICKERY in the Williams matter and CDA and
11 MR. BARRON in the Jasperson Matter.

12 31. Defendants accepted Plaintiff's services with the knowledge that Plaintiff expected to
13 be compensated therefor and each and every defendant received a benefit from Plaintiff's legal
14 services.

15 32. Plaintiff performed all of its promissory obligations to Defendants. Plaintiff has at all
16 times herein fully performed the terms and conditions of the agreement for services in the manner
17 specified by the Defendants, except where said performance was excused or prevented by the conduct
18 of the Defendants.

19 33. Defendants breached the terms of the fee agreement by failing to pay Plaintiff for the
20 legal services Plaintiff rendered on Defendants' behalf.

21 34. Plaintiff has suffered damages as a direct and proximate result of the Defendants'
22 breach of their promises to pay Plaintiff the full amount of legal fees due and owing.

23 35. Plaintiff's damages are certain, foreseeable, and measurable consequences of
24 Defendants' breach. As a direct and proximate result of the Defendants' breach, Plaintiff has been
25 damaged in an amount according to proof, for outstanding legal fees plus interest accrued and growing,
26 owed by Defendants to Plaintiff.

27 36. In the alternative, Plaintiff is entitled to quantum meruit, i.e., the reasonable value of the
28 services rendered to Defendants.

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1 amount according to proof, for outstanding legal fees plus interest accrued and growing, owed by
 2 Defendants to Plaintiff.

3 43. In the alternative, Plaintiff is entitled to quantum meruit, i.e., the reasonable value of the
 4 services rendered to Defendants in order to prevent Defendants' unjust enrichment.

5 THIRD CAUSE OF ACTION

6 (BREACH OF IMPLIED IN FACT CONTRACT AGAINST ALL DEFENDANTS AND DOES)

7 44. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full, each
 8 and every allegation contained in Paragraphs 1 through 43, inclusive.

9 45. Plaintiff and Defendants have at all times acted consistently with the existence of a
 10 valid contract for the rendering of Plaintiff's professional services. Plaintiff performed its duties
 11 arising under the contract for approximately one year, save those obligations which were excused by
 12 Defendants' breach. Throughout that time, Defendants accepted the benefit of Plaintiff's services with
 13 full knowledge that Plaintiff expected to be financially compensated for its professional efforts.

14 46. Defendants have breached the implied in fact contract by failing and refusing to
 15 financially compensate Plaintiff for services rendered. As a result, Defendants have been unjustly
 16 enriched by benefitting from legal services for which they did not pay.

17 47. Plaintiff's damages are a certain, foreseeable, and measurable consequence of
 18 Defendants' breach. As a direct and proximate result of said breach, Plaintiff has been damaged in an
 19 amount according to proof, for outstanding legal fees plus interest accrued and growing, owed by
 20 Defendants to Plaintiff.

21 FOURTH CAUSE OF ACTION

22 (BREACH OF IMPLIED IN LAW CONTRACT AGAINST ALL DEFENDANTS AND DOES)

23 48. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full, each
 24 and every allegation contained in Paragraphs 1 through 47, inclusive.

25 49. Plaintiff has rendered professional services to Defendants from which Defendants
 26 have benefitted. Said services were not rendered gratuitously but with the mutual understanding that
 27 Plaintiff would be paid for the services rendered. Throughout that time, Defendants accepted the
 28 benefit of Plaintiff's services with full knowledge that Plaintiff expected to be financially compensated

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1 for its professional efforts.

2 50. Defendants have failed to compensate Plaintiff for the services it rendered. As a result,
 3 Defendants have been unjustly enriched by benefitting from legal services for which they did not pay.

4 51. Plaintiff's damages are a certain, foreseeable, and measurable consequence of
 5 Defendants' breach. As a direct and proximate result of said breach, Plaintiff has been damaged in an
 6 amount according to proof, for outstanding legal fees plus interest accrued and growing, owed by
 7 Defendants to Plaintiff. Plaintiff seeks to recover the reasonable value of its services.

8 **FIFTH CAUSE OF ACTION**

9 **(VIOLATION OF CIVIL CODE §§1709 and 1710 (DECEIT) AGAINST DEFENDANTS CDA,**
 10 **MR. BARRON, MR. COSIO-BARRON AND DOES).**

11 52. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 51
 12 as though fully set forth herein.

13 53. Since November of 2003 and continuing until December of 2004, MR. BARRON and
 14 MR. COSIO-BARRON repeatedly represented to Plaintiff that CDA would pay Plaintiff for the legal
 15 services it rendered. These representations of fact were false, false at the time they were made, and
 16 MR. BARRON and MR. COSIO-BARRON were aware of their falsity at the time they were made.

17 54. MR. BARRON and MR. COSIO-BARRON falsely represented their and CDA's
 18 intention to pay Plaintiff and the false representations were made with the intent that Plaintiff rely on
 19 them. Plaintiff actually relied on CDA, MR. BARRON and MR. COSIO-BARRON's false
 20 representations of fact by agreeing to represent Defendants and continuing to represent Defendants for
 21 one year. Plaintiff's reliance was reasonable as Plaintiff was introduced to Defendants through a
 22 mutual friend and remained reasonable throughout the representation due to Plaintiff's growing
 23 friendship with Defendants and Defendants' promises and sporadic partial payments.

24 55. CDA was aware that MR. BARRON and MR. COSIO-BARRON, who are CDA's
 25 officers, directors, and managing agents, had made false representations regarding CDA's ability and
 26 intention to pay Plaintiff for its services and failed to take any reasonable steps to prevent, stop, or
 27 remedy the fraudulent statements.

28 56. CDA, MR. BARRON and MR. COSIO-BARRON's fraudulent statements were made

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1 with malice and a conscious disregard for the probable consequences their statements would cause
2 Plaintiff.

3 57. As a direct and proximate result of CDA, MR. BARRON and MR. COSIO-BARRON's
4 statements, Plaintiff has been damaged in an amount to be proven at trial. Defendants' conduct and
5 actions were done with malice, fraud, or oppression, and reckless disregard of Plaintiff's rights.
6 Defendants engaged in offensive conduct despite their awareness of the effect on Plaintiff. As a result
7 of these and other actions, Plaintiff is entitled to punitive and exemplary damages.

8 SIXTH CAUSE OF ACTION

9 (VIOLATION OF CIVIL CODE § 1572 (ACTUAL FRAUD) AGAINST DEFENDANTS CDA,
10 MR. BARRON, MR. COSIO-BARRON AND DOES)

11 58. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 57,
12 as though fully set forth herein.

13 59. Since November of 2003 and continuing until December of 2004, MR. BARRON and
14 MR. COSIO-BARRON repeatedly represented to Plaintiff that CDA would pay Plaintiff for the legal
15 services they rendered. These representations of fact were false, false at the time they were made, and
16 MR. BARRON and MR. COSIO-BARRON were aware of their falsity at the time they were made.

17 60. MR. BARRON and MR. COSIO-BARRON falsely represented their and CDA's
18 intention to pay Plaintiff and the false representations were made with the intent that Plaintiff rely on
19 them. Plaintiff actually relied on MR. BARRON and MR. COSIO-BARRON's false representations
20 of fact by entering into the fee agreement with CDA and by continuing to represent Defendants in each
21 matter as they arose. Prior to each new matter, MR. BARRON and MR. COSIO-BARRON assured
22 Plaintiff that Plaintiff would be paid for each and every matter. Plaintiff's reliance was reasonable as
23 Plaintiff was introduced to Defendants through a mutual friend and remained reasonable throughout
24 the representation due to Plaintiff's growing friendship with Defendants and Defendants' sporadic
25 partial payments and repeated oral assurances that Plaintiff would be paid.

26 61. CDA was aware that MR. BARRON and MR. COSIO-BARRON, who are CDA's
27 officers, directors, and managing agents, had made false representations regarding CDA's ability and
28 intention to pay Plaintiff for its services and failed to take any reasonable steps to prevent, stop, or

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1 remedy the fraudulent statements.

2 62. MR. BARRON and MR. COSIO-BARRON's fraudulent statements were made with
3 malice and a conscious disregard for the probable consequences their statements would cause Plaintiff.

4 63. As a direct and proximate result of MR. BARRON and MR. COSIO-BARRON's
5 statements, Plaintiff has been damaged in an amount to be proven at trial. Defendants' conduct and
6 actions were done with malice, fraud, or oppression, and reckless disregard of Plaintiff's rights.
7 Defendants engaged in offensive conduct despite their awareness of the effect on Plaintiff. As a result
8 of these and other actions, Plaintiff is entitled to punitive and exemplary damages.

9 **SEVENTH CAUSE OF ACTION**

10 **(VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ. AGAINST ALL**
11 **DEFENDANTS AND DOES)**

12 64. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 63,
13 as though fully set forth herein.

14 65. Plaintiff is informed and believe that Defendants engaged in acts of fraudulent
15 business practices and untrue or misleading advertisements in violation of numerous provisions under
16 federal and state statutory and common law, including but not limited to the Unfair Competition Law
17 (California Business & Professions Code §§ 17200 et seq. and 17500 et seq.) and the Consumer Legal
18 Remedies Act (Civil Code § 1770 et seq.)

19 66. California Business and Professions Code § 17200 et seq., provides that unfair
20 competition shall mean and include "all unlawful, unfair or fraudulent business act or practices and
21 unfair, deceptive, untrue or misleading advertising."

22 67. Defendants fall within the definition of "person" as set forth at Business & Professions
23 Code § 17203 and § 17506.

24 68. Plaintiff is informed, believes, and thereon alleges that Defendants have maintained
25 fraudulent business practices by engaging in practices including but not limited to the following:
26 falsely stating that Defendants intend to pay for legal services, falsely stating that Defendants have the
27 ability to pay for legal services, and continuing to misrepresent their intention and ability to pay for
28 legal services over a one year period in order to induce their attorneys to continue to provide them with

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1 legal representation. Plaintiff is not Defendants only victims. Defendants have engaged in similar
2 conduct with at least three other law firms within the past two years.

3 69. Plaintiff is informed, believes, and thereupon alleges that as a direct and proximate
4 result of Defendants' unfair and fraudulent business practices, Defendants have received and will
5 continue to receive ill-gotten gains. Plaintiff is therefore entitled to disgorgement of all monies saved
6 as a result of Defendants' fraud.

7 70. Defendants' conduct and actions were done with malice, fraud, or oppression, and
8 reckless disregard of Plaintiff's rights. Defendants engaged in offensive conduct despite their
9 awareness of the effect on Plaintiff. As a result of these and other actions, Plaintiff is entitled to
10 punitive and exemplary damages.

11 EIGHTH CAUSE OF ACTION

12 (OPEN BOOK ACCOUNTING AGAINST ALL DEFENDANTS AND DOES)

13 71. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 69,
14 as though fully set forth herein.

15 72. Plaintiff has received some monetary payment for the legal services Plaintiff provided
16 to Defendants.

17 73. Plaintiff is informed and believes and thereon alleges that Defendants has provided
18 Plaintiff with some money as payment for legal services rendered, but not the entire remaining balance
19 due.

20 74. Plaintiff is informed, believes, and thereon alleges that Plaintiff is entitled to an open
21 book accounting for the monies owed to Plaintiff by Defendants.

22
23 WHEREFORE, Plaintiff prays for judgment as follows:

- 24 1. For general and compensatory damages, including prejudgment interest, in accordance
- 25 with proof at time of trial on the First and Second Causes of Action;
- 26 2. For quantum meruit on the Third and Fourth Causes of Action;
- 27 3. For general and punitive damages to be determined at trial on the Fifth and Sixth
- 28

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Causes of Action;

3. For restitution and disgorgement, injunctive relief, and any further relief the court deems just and proper on the Seventh Cause of Action;
4. For an open book accounting, general damages according to proof, and any further relief the court deems just and proper on the Eighth Cause of Action;
5. For Plaintiff's costs and attorneys fees;
6. For such other and further relief as the Court may deem just and proper.

DATED: January 21, 2005

KEITH A FINK & ASSOCIATES

By



Keith A. Fink

Jack Rifenbark

Attorneys for Plaintiff

KEITH A. FINK & ASSOCIATES,

a sole proprietorship dba KEITH A. FINK
& ASSOCIATES

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 Jack Rifenburg, Bar No. 227698
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 6 Canyon Country, CA 91351
 Telephone: (661) 313-2893

7
 8 Attorneys for Plaintiff
 KEITH A. FINK & ASSOCIATES,
 9 a sole proprietorship dba KEITH A. FINK & ASSOCIATES

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF LOS ANGELES - CENTRAL DISTRICT
 12

13 KEITH A. FINK & ASSOCIATES, a sole
 proprietorship dba Keith A. Fink & Associates,

14 Plaintiffs,
 15

16 vs.

17 CONSUMER DIRECT OF AMERICA, a
 Nevada Corporation; FREEDOM
 MORTGAGE CORPORATION dba OCEAN
 18 WEST FUNDING; MICHAEL A. BARRON,
 an individual; JOSEPH COSIO-BARRON, an
 19 individual; WAYNE BAILEY, an individual;
 PAUL GRADY, an individual; TERRY
 20 VICKERY, an individual, and DOES 1 through
 50, inclusive.

21 Defendants
 22
 23
 24
 25
 26
 27
 28

CASE NO. BC 327620

FIRST AMENDED COMPLAINT
 FOR:

- (1) BREACH OF CONTRACT
- (2) BREACH OF ORAL CONTRACT
- (3) BREACH OF IMPLIED IN FACT CONTRACT
- (4) BREACH OF IMPLIED IN LAW CONTRACT
- (5) VIOLATION OF CIVIL CODE §§ 1709 AND 1710 (DECEIT)
- (6) VIOLATION OF CIVIL CODE § 1572 (ACTUAL FRAUD)
- (7) VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.
- (8) OPEN BOOK ACCOUNTING

[Jury Trial Demanded]

FILED
 LOS ANGELES SUPERIOR COURT

FEB 18 2005

JOHN A. CLARKE, CLERK
 BY C. JASPER, DEPUTY

FIRST AMENDED COMPLAINT

9/27/05 NO. 3854

WONNELL TROPP & BRAUN, LLP

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1 Plaintiff and KEITH A. FINK & ASSOCIATES, a sole proprietorship dba Keith A. Fink &
2 Associates hereby alleges as follows:

3 VENUE AND PARTIES

4 1. Plaintiff KEITH A. FINK & ASSOCIATES, a sole proprietorship dba Keith A. Fink &
5 Associates (hereafter "FINK LAW FIRM" and/or "Plaintiff") is and was, and all times relevant hereto,
6 a sole proprietorship doing business as Keith A. Fink & Associates, and located in and doing business
7 in the County of Los Angeles, State of California.

8 2. Defendant CONSUMER DIRECT OF AMERICA (hereinafter "CDA" and/or
9 "Defendants") is, and at all times relevant herein has been, a Nevada Corporation which is authorized
10 to conduct business in the State of California.

11 3. Defendant FREEDOM MORTGAGE CORPORATION dba OCEAN WEST
12 FUNDING(hereinafter "OCEAN WEST" and/or "Defendants") is, and at all times relevant herein has
13 been, a business entity form unknown which is authorized to conduct business and conducts substantial
14 business in the State of California.

15 4. Defendant MICHAEL A. BARRON (hereinafter "Mr. BARRON" and/or "Defendants")
16 is, and at all times relevant herein has been, an individual residing in Clark County, Nevada and is the
17 Chairman and Chief Executive Officer of CDA.

18 5. Defendant PAUL GRADY (hereinafter "MR. GRADY" and/or "Defendants") is, and at
19 all times relevant herein has been, an individual residing in Clark County, Nevada and is the Executive
20 Vice President of CDA.

21 6. Defendant JOSEPH COSIO-BARRON (hereinafter "MR. COSIO-BARRON" and/or
22 "Defendants") is, and at all times relevant herein has been, an individual residing in Clark County,
23 Nevada and is CDA's Corporate Counsel and an agent of CDA. Plaintiff is informed, believes, and on
24 that basis alleges that MR. COSIO-BARRON maintains a residence in San Francisco, California.

25 7. Defendant WAYNE BAILEY (hereinafter "MR. BAILEY" and/or "Defendants") is, and
26 at all times relevant herein has been, an individual residing in the State of Utah and is the President
27 and the Chief Financial Officer of CDA.

28 8. Defendant TERRY VICKERY (hereinafter "MR. VICKERY" and/or "Defendants") is,

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1 and at all times relevant herein has been, an individual residing in Clark County, Nevada and Colorado
2 and is a managing agent/employee of CDA.

3 9. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
4 associate or otherwise, of Defendants DOES 1 through 50 (hereinafter "DOES" and/or "Defendants"),
5 inclusive, and therefore sues said Does by such fictitious names. Plaintiff will seek leave of Court to
6 amend this Complaint to show the true names and capacities of such DOES when the same has been
7 ascertained. Plaintiff is informed, believes, and thereupon alleges that each of the fictitiously named
8 Defendants are responsible to Plaintiff for the injuries suffered and alleged herein, or are subject to the
9 jurisdiction of the Court as a necessary party for the relief herein requested.

10 10. Plaintiff is informed, believes, and thereupon alleges that each DOE is now, and
11 was at all times mentioned herein, the agent, principal, partner, joint venturer, employee or alter ego of
12 the remaining Defendants, and that all of the acts and conduct alleged herein were performed within
13 the course and scope and in the furtherance of such agency, partnership, joint venture, employment or
14 alter ego relationship.

15 11. Venue is properly laid in this Court as the torts were committed in Los Angeles County,
16 California and the contracts sued upon was negotiated, executed, and substantially performed in Los
17 Angeles County, California.

18 FACTUAL ALLEGATIONS

19 12. Plaintiff repeats, re-alleges, and incorporates herein by this reference Paragraphs 1
20 through 11, as though fully set forth herein.

21 13. $8 + 4 + 12 = 0$. Some things just do not add up. According to CDA, eight law suits
22 litigated in four states for over twelve months equal zero dollars in legal fees. Suffice to say, Plaintiff
23 has been defrauded. In furtherance of its expansionist goals, in early 2002, CDA embarked upon a
24 campaign to acquire small but successful mortgage brokerages around the country and add them to
25 CDA's nation-wide umbrella of net branches. Defendants seemed to view CDA's expansion as
26 manifest destiny. In furtherance of this self-sanctioned destiny, Defendants were allegedly not
27 constrained by cost, contracts, or past promises. Defendants sought the proverbial "something for
28 nothing" by taking what they wanted without paying for it. Unfortunately for CDA, the law firm which

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1 shielded it from the alleged natural repercussions of Defendants' business practices has done its own
2 arithmetic. Eight law suits plus zero dollars paid plus scores of empty promises equals this Complaint.

3 14. In late 2003, Defendants found themselves forced to litigate a matter in California
4 which exposed not only CDA but each instant individual defendants to a thirteen million dollar Cross-
5 complaint. Convinced that the attorney who filed the complaint for CDA was incompetent to handle
6 the matter, Defendants looked for more effective counsel to shield them from the massive exposure and
7 to tenaciously prosecute their claims. It is against this back drop that Defendants were introduced to
8 Keith A. Fink ("Mr. Fink") of Keith A. Fink & Associates.

9 15. In November of 2003, CDA filed a lawsuit against Las Vegas Mortgage Company and
10 Raymond and Sheree Williams in Orange County, California. The suit arose from the failed
11 acquisition of Raymond and Sheree Williams' company, Las Vegas Mortgage Company ("LVMC").
12 The Williams cross-complained against CDA, MR. BARRON, MR. GRADY, MR. COSIO-BARRON,
13 MR. BAILEY, and MR. VICKERY for failing to issue unrestricted stock in consideration for acquiring
14 LVMC, as called for by acquisition agreement, and demanded damages totaling thirteen million dollars
15 (\$13,000,000.00).¹ The Cross-complaint was designed to bankrupt CDA and the instant individual
16 defendants. However, when CDA and the individuals asked for help, Plaintiff was there to remedy the
17 situation. Thus began Plaintiff's relationship with Defendants.

18 16. Beginning in or about November 2003 and continuing, Plaintiff first provided legal
19 services to Defendants in defense of the following actions brought by and against Defendants:
20 Consumer Direct of America v. Lending Services Corporation (hereinafter the "Williams Matter") and
21 thereafter Castlin Enterprises, Inc. v. Consumer Direct of America, Inc. (hereinafter the "Jasperson
22 Matter"). In addition, Defendants sought Plaintiff's legal advice on various employment matters from
23 time to time and Plaintiff provided Defendants with the requested advice and legal work. This work
24 included reviewing employment agreements and the employee handbook and making suggestions as to
25 recommended revisions.

26 17. On or about December 30, 2003, Plaintiff and CDA entered into a written fee
27

28 ¹The Williams family filed two related cases in Clark County, Nevada under case numbers A467140 and A467141. These matters were successfully resolved in the same settlement.

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1 agreement wherein CDA agreed to pay Plaintiff for its legal services. The essential terms of the Fee
 2 Agreement were: (1) Plaintiff "agree[s] to provide those legal services that are reasonably required to
 3 represent [Defendants] and shall take reasonable steps to keep [Defendants] informed of progress and
 4 to respond to [Defendants'] inquiries." (2) "[Mr. Fink's] billing rate is \$400 per hour. Associates bill
 5 at the rate of \$260 per hour." and (3) "All bills are due on the 10th day after their date and are to be paid
 6 by [Defendants] on or before that date." Defendants were permitted to pay Plaintiff's bills in either
 7 cash or, in lieu thereof, issue Plaintiff stock in CDA with said issuance equaling the total sum of money
 8 owed. During the course of the representation, MR. BARRON became concerned about the likely
 9 dilution of existing shareholders' percentage ownership of the company if Plaintiff were paid in stock.
 10 Consequently, Plaintiff offered to accept cash only as payment instead of stock. Defendants accepted
 11 this offer and the Fee Agreement was amended accordingly.

12 18. Per the parties Fee Agreement, Defendants were obligated to pay all monies due to
 13 Plaintiff within ten days of the date of the billing statement. Per the Fee Agreement, Defendant also
 14 had ten days in which to raise questions regarding the bills, otherwise, if no questions were raised,
 15 Plaintiff would rely on this silence as Defendants' acceptance of the bill and account as stated.

16 19. Throughout the representation, Plaintiff provided Defendants with monthly billing
 17 statements describing the legal services Plaintiff performed on Defendants' various matters. Not once
 18 did Defendants complain that any of the work performed by Plaintiff was unnecessary or that the time
 19 Plaintiff spent on a particular task was excessive. In fact, Defendants repeatedly praised Plaintiff for
 20 Plaintiff's good work on behalf of Defendants giving Mr. Fink such descriptive nicknames as "Chief,"
 21 "Bulldog," "CDA's Red Adair," "the Fifth Head of CDA," "Mike Barron's Wingman" and "Assassin."

22 20. Plaintiff's effective representation in the Williams Matter saved CDA approximately
 23 2.4 million shares of stock totaling approximately \$1,400,000.00. This unqualified success led
 24 Defendants to look to Plaintiff for all of their litigation needs, no matter the size, subject matter,
 25 jurisdiction, or venue.

26 21. Just prior to the conclusion of the Williams Matter, Defendants asked Plaintiff to
 27 substitute into the "Jasperson Matter." Both CDA and MR. BARRON are named as Defendants in
 28 that action. The Jasperson Matter is strikingly similar to the Williams Matter. CDA acquired the

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1 Jasperson's business assets and hired the Jaspersons to manage a branch of CDA in Nevada.² The
 2 relationship quickly deteriorated when CDA allegedly failed to deliver the freely trading CDA stock to
 3 pay for the assets as called for in the acquisition agreement. Plaintiff was admitted to the Nevada Bar
 4 *pro hac vice* in order to fight for CDA and MR. BARRON.

5 22. Thrilled with Plaintiff's representation and results, Defendants repeatedly brought all of
 6 their litigation matters to Plaintiff, regardless of size. Plaintiff was retained in another California
 7 action entitled GE Business Productivity Solutions v. Consumer Direct of America ("GE Matter").
 8 The GE Matter revolved around an internet bill which CDA allegedly incurred but never paid.
 9 Plaintiff resolved the matter to Defendants' satisfaction. Plaintiff was also asked to represent CDA's
 10 interests in Cal Realty v. Keane et al.

11 23. CDA also retained Plaintiff to represent Ocean West Funding, a California corporation
 12 CDA was then negotiating to purchase, in Citicorp Mortgage v. Ocean West Enterprises.³ CDA
 13 recommended Plaintiff to Ocean West Funding to represent Ocean West Funding in lawsuits pending
 14 in California and Illinois based upon Plaintiff's past performance on CDA's behalf and CDA
 15 guaranteed that Plaintiff's legal fees would be paid.

16 24. Despite Plaintiff's string of successes and legal services provided, Plaintiff was not
 17 compensated in full. Defendants repeatedly promised Plaintiff that full payment would be
 18 forthcoming. Based upon these assurances and representations, Plaintiff agreed to represent
 19 Defendants in Consumer Direct of America v. Consulting Services, Consulting Services v. Consumer
 20 Direct of America, and a related matter entitled Two Barrett Lakes Office Center v. South County
 21 Financial Services (hereinafter, collectively the "Consulting Services Matters").

22 25. These suits revolved around the now familiar theme, the acquisition of a smaller
 23 mortgage brokerage, the hiring of the target company's principals, and CDA's alleged failure to issue
 24 stock as payment for the company or alleged failure to issue freely trading stock for the acquisition.

26
 27 ²CDA's branch offices operate throughout the country under the name Consumer Direct
 Lending ("CDL").

28 ³Plaintiff is informed, believes, and on that basis alleges that CDA eventually acquired Ocean
 West Funding.

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1 The issue over the proper jurisdiction for the Consulting Services Matters necessitated many motions
 2 and scores of hours at a great expense to Plaintiff. Throughout the course of Plaintiff's involvement in
 3 the Consulting Services Matters, MR. BARRON and MR. COSIO-BARRON repeatedly promised
 4 Plaintiff that Plaintiff would be compensated in full for all of its work.

5 26. With these promises ringing in Mr. Fink's ears, Plaintiff also agreed to represent
 6 CDA in another federal case entitled Consumer Direct of America v. Ferguson et al. (hereinafter the
 7 "Ferguson Matter") and further agreed to defend CDA, MR. BARRON, MR. COSIO-BARRON, and
 8 MR. VICKERY in an almost identical action entitled Williamson et al. v. Consumer Direct of America
 9 et al. (hereinafter the "Williamson Matter") which was filed in the Western District of North Carolina.
 10 In response to the complaint in the Williamson Matter, Plaintiff successfully persuaded a federal judge
 11 sitting in the Western District of North Carolina to divest North Carolina of jurisdiction and transfer
 12 the matter to the District of Nevada for consolidation with the Ferguson Matter. This victory not only
 13 saved CDA the cost of hiring local counsel in North Carolina but ensured that CDA's opposition
 14 would have to endure that expense to its severe disadvantage.

15 27. Throughout the attorney-client relationship, Defendants expressed their extreme
 16 satisfaction and confidence in Plaintiff's legal services with jocular praise and jubilant appreciation.
 17 Defendants commended Plaintiff for its work ethic, recognizing that Plaintiff worked evenings and
 18 weekends and made itself available to Defendants outside of regular business hours.

19 28. To date, Defendants have incurred over \$800,000.00 in legal fees and costs which they
 20 have repeatedly orally promised to pay and repeatedly failed to pay. It seems that Defendants have
 21 developed a pattern of promising to pay and failing to deliver (e.g. the Williams Matter, Jasperson
 22 Matter, GE Matter, Consulting Services Matters, Ferguson Matter and Williamson Matter). Plaintiff
 23 represented Defendants in eight lawsuits, in four states, for over twelve months, and has benefitted by
 24 not one dime. It is time for CDA to pay its bills.

25 FIRST CAUSE OF ACTION

26 **(BREACH OF CONTRACT AGAINST CDA, MR. BARRON, MR. COSIO-BARRON, MR.**
 27 **BAILEY, MR. GRADY, MR. VICKERY AND DOES)**

28 29. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 28.

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1 as though fully set forth herein.

2 30. On or about December 30, 2003, Plaintiff and CDA entered into a written fee
3 agreement wherein CDA agreed to pay Plaintiff for its legal services. The essential terms of the Fee
4 Agreement were: (1) Plaintiff "agree[s] to provide those legal services that are reasonably required to
5 represent [Defendants] and shall take reasonable steps to keep [Defendants] informed of progress and
6 to respond to [Defendants'] inquiries," (2) "[Mr. Fink's] billing rate is \$400 per hour. Associates bill
7 at the rate of \$260 per hour," and (3) "All bills are due on the 10th day after their date and are to be paid
8 by [Defendants] on or before that date." Defendants were permitted to pay Plaintiff's bills in either
9 cash or, in lieu thereof, issue Plaintiff stock in CDA with said issuance equaling the total sum of
10 money owed. During the course of the representation, MR. BARRON became concerned about the
11 likely dilution of existing shareholders' percentage ownership of the company if Plaintiff were paid in
12 stock. Consequently, Plaintiff offered to accept cash only as payment instead of stock. Defendants
13 accepted this offer and the Fee Agreement was amended accordingly.

14 31. The fee agreement was entered into in connection with the Williams and Jasperson
15 Matters. Plaintiff's services included legal representation of CDA, MR. BARRON, MR. COSIO-
16 BARRON, MR. BAILEY, MR. GRADY and MR. VICKERY in the Williams matter and CDA and
17 MR. BARRON in the Jasperson Matter.

18 32. Defendants accepted Plaintiff's services with the knowledge that Plaintiff expected to
19 be compensated therefor and each and every defendant received a benefit from Plaintiff's legal
20 services.

21 33. Plaintiff performed all of its promissory obligations to Defendants. Plaintiff has at all
22 times herein fully performed the terms and conditions of the agreement for services in the manner
23 specified by the Defendants, except where said performance was excused or prevented by the conduct
24 of the Defendants.

25 34. Defendants breached the terms of the fee agreement by failing to pay Plaintiff for the
26 legal services Plaintiff rendered on Defendants' behalf.

27 35. Plaintiff has suffered damages as a direct and proximate result of the Defendants'
28 breach of their promises to pay Plaintiff the full amount of legal fees due and owing.

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36. Plaintiff's damages are certain, foreseeable, and measurable consequences of Defendants' breach. As a direct and proximate result of the Defendants' breach, Plaintiff has been damaged in an amount according to proof, for outstanding legal fees plus interest accrued and growing, owed by Defendants to Plaintiff.

37. In the alternative, Plaintiff is entitled to quantum meruit, i.e., the reasonable value of the services rendered to Defendants.

SECOND CAUSE OF ACTION

(BREACH OF ORAL CONTRACT AGAINST CDA, OCEAN WEST, MR. BARRON, MR. COSIO BARRON, MR. VICKERY AND DOES)

38. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 37, inclusive.

39. Plaintiff and Defendants entered into an oral agreement for Plaintiff to represent CDA in the following actions: the GE Matter, the Ferguson Matter, Cal Realty v. Keane et al., the Williamson Matter, Citicorp Mortgage v. Ocean West Enterprises and the Consulting Services Matters. The terms of the oral agreement were (1) Plaintiff would represent CDA in the GE Matter, the Ferguson Matter, Cal Realty v. Keane et al., the Williamson Matter, Citicorp Mortgage v. Ocean West Enterprises and the Consulting Services Matters, (2) Plaintiff would charge CDA an hourly rate, and (3) CDA would pay Plaintiff's legal fees on a monthly basis so long as Plaintiff continued to represent CDA in the GE Matter, the Ferguson Matter, Cal Realty v. Keane et al., the Williamson Matter, Citicorp Mortgage v. Ocean West Enterprises and the Consulting Services Matters.

40. Plaintiff, MR. BARRON, MR. COSIO-BARRON and MR. VICKERY entered into an oral agreement for Plaintiff to represent MR. BARRON, MR. COSIO-BARRON and MR. VICKERY. The terms of the oral agreement were (1) Plaintiff would represent MR. BARRON, MR. COSIO-BARRON and MR. VICKERY in the Williams and Williamson Matters, (2) Plaintiff would charge MR. BARRON, MR. COSIO-BARRON and MR. VICKERY an hourly rate, and (3) MR. BARRON, MR. COSIO-BARRON and MR. VICKERY would pay Plaintiff's legal fees on a monthly basis so long as Plaintiff continued to represent MR. BARRON, MR. COSIO-BARRON and MR. VICKERY.

41. Plaintiff, OCEAN WEST entered into an oral agreement for Plaintiff to represent

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1 OCEAN WEST. The terms of the oral agreement were (1) Plaintiff would represent OCEAN WEST,
 2 in the Citicorp Mortgage v. Ocean West Enterprises Matter, (2) Plaintiff would charge OCEAN
 3 WEST an hourly rate, and (3) OCEAN WEST would pay Plaintiff's legal fees on a monthly basis so
 4 long as Plaintiff continued to represent OCEAN WEST.

5 42. Plaintiff at all times performed its obligations under the oral agreement, save those
 6 obligations excused by CDA, OCEAN WEST, MR. BARRON, MR. COSIO-BARRON and MR.
 7 VICKERY's breach.

8 43. CDA, OCEAN WEST, MR. BARRON, MR. COSIO-BARRON and MR. VICKERY
 9 breached the terms of the oral agreement by refusing to pay Plaintiff's legal fees on a monthly basis.
 10 This refusal to perform on the contract was without stipulation, valid justification, or excuse.

11 44. Plaintiff's damages are a certain, foreseeable, and measurable consequence of
 12 Defendants' breach. As a direct and proximate result of said breach, Plaintiff has been damaged in an
 13 amount according to proof, for outstanding legal fees plus interest accrued and growing, owed by
 14 Defendants to Plaintiff.

15 45. In the alternative, Plaintiff is entitled to quantum meruit, i.e., the reasonable value of the
 16 services rendered to Defendants in order to prevent Defendants' unjust enrichment.

17 THIRD CAUSE OF ACTION

18 **(BREACH OF IMPLIED IN FACT CONTRACT AGAINST ALL DEFENDANTS AND DOES)**

19 46. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full, each
 20 and every allegation contained in Paragraphs 1 through 45, inclusive.

21 47. Plaintiff and Defendants have at all times acted consistently with the existence of a
 22 valid contract for the rendering of Plaintiff's professional services. Plaintiff performed its duties
 23 arising under the contract for approximately one year, save those obligations which were excused by
 24 Defendants' breach. Throughout that time, Defendants accepted the benefit of Plaintiff's services with
 25 full knowledge that Plaintiff expected to be financially compensated for its professional efforts.

26 48. Defendants have breached the implied in fact contract by failing and refusing to
 27 financially compensate Plaintiff for services rendered. As a result, Defendants have been unjustly
 28 enriched by benefitting from legal services for which they did not pay.

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49. Plaintiff's damages are a certain, foreseeable, and measurable consequence of Defendants' breach. As a direct and proximate result of said breach, Plaintiff has been damaged in an amount according to proof, for outstanding legal fees plus interest accrued and growing, owed by Defendants to Plaintiff.

FOURTH CAUSE OF ACTION

(BREACH OF IMPLIED IN LAW CONTRACT AGAINST ALL DEFENDANTS AND DOES)

50. Plaintiff re-alleges and incorporates herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 49, inclusive.

51. Plaintiff has rendered professional services to Defendants from which Defendants have benefitted. Said services were not rendered gratuitously but with the mutual understanding that Plaintiff would be paid for the services rendered. Throughout that time, Defendants accepted the benefit of Plaintiff's services with full knowledge that Plaintiff expected to be financially compensated for its professional efforts.

52. Defendants have failed to compensate Plaintiff for the services it rendered. As a result, Defendants have been unjustly enriched by benefitting from legal services for which they did not pay.

53. Plaintiff's damages are a certain, foreseeable, and measurable consequence of Defendants' breach. As a direct and proximate result of said breach, Plaintiff has been damaged in an amount according to proof, for outstanding legal fees plus interest accrued and growing, owed by Defendants to Plaintiff. Plaintiff seeks to recover the reasonable value of its services.

FIFTH CAUSE OF ACTION

(VIOLATION OF CIVIL CODE §§1709 and 1710 (DECEIT) AGAINST DEFENDANTS CDA, MR. BARRON, MR. COSIO-BARRON AND DOES)

54. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 53 as though fully set forth herein.

55. Since November of 2003 and continuing until December of 2004, MR. BARRON and MR. COSTO-BARRON repeatedly represented to Plaintiff that CDA would pay Plaintiff for the legal services it rendered. These representations of fact were false, false at the time they were made, and MR. BARRON and MR. COSIO-BARRON were aware of their falsity at the time they were made.

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56. MR. BARRON and MR. COSIO-BARRON falsely represented their and CDA's intention to pay Plaintiff and the false representations were made with the intent that Plaintiff rely on them. Plaintiff actually relied on CDA, MR. BARRON and MR. COSIO-BARRON's false representations of fact by agreeing to represent Defendants and continuing to represent Defendants for one year. Plaintiff's reliance was reasonable as Plaintiff was introduced to Defendants through a mutual friend and remained reasonable throughout the representation due to Plaintiff's growing friendship with Defendants and Defendants' promises and sporadic partial payments.

57. CDA was aware that MR. BARRON and MR. COSIO-BARRON, who are CDA's officers, directors, and managing agents, had made false representations regarding CDA's ability and intention to pay Plaintiff for its services and failed to take any reasonable steps to prevent, stop, or remedy the fraudulent statements.

58. CDA, MR. BARRON and MR. COSIO-BARRON's fraudulent statements were made with malice and a conscious disregard for the probable consequences their statements would cause Plaintiff.

59. As a direct and proximate result of CDA, MR. BARRON and MR. COSIO-BARRON's statements, Plaintiff has been damaged in an amount to be proven at trial. Defendants' conduct and actions were done with malice, fraud, or oppression, and reckless disregard of Plaintiff's rights. Defendants engaged in offensive conduct despite their awareness of the effect on Plaintiff. As a result of these and other actions, Plaintiff is entitled to punitive and exemplary damages.

SIXTH CAUSE OF ACTION

(VIOLATION OF CIVIL CODE § 1572 (ACTUAL FRAUD) AGAINST DEFENDANTS CDA, MR. BARRON, MR. COSIO-BARRON AND DOES)

60. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 59, as though fully set forth herein.

61. Since November of 2003 and continuing until December of 2004, MR. BARRON and MR. COSIO-BARRON repeatedly represented to Plaintiff that CDA would pay Plaintiff for the legal services they rendered. Those representations of fact were false, false at the time they were made, and MR. BARRON and MR. COSIO-BARRON were aware of their falsity at the time they were made.

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62. MR. BARRON and MR. COSIO-BARRON falsely represented their and CDA's intention to pay Plaintiff and the false representations were made with the intent that Plaintiff rely on them. Plaintiff actually relied on MR. BARRON and MR. COSIO-BARRON's false representations of fact by entering into the fee agreement with CDA and by continuing to represent Defendants in each matter as they arose. Prior to each new matter, MR. BARRON and MR. COSIO-BARRON assured Plaintiff that Plaintiff would be paid for each and every matter. Plaintiff's reliance was reasonable as Plaintiff was introduced to Defendants through a mutual friend and remained reasonable throughout the representation due to Plaintiff's growing friendship with Defendants and Defendants' sporadic partial payments and repeated oral assurances that Plaintiff would be paid.

63. CDA was aware that MR. BARRON and MR. COSIO-BARRON, who are CDA's officers, directors, and managing agents, had made false representations regarding CDA's ability and intention to pay Plaintiff for its services and failed to take any reasonable steps to prevent, stop, or remedy the fraudulent statements.

64. MR. BARRON and MR. COSIO-BARRON's fraudulent statements were made with malice and a conscious disregard for the probable consequences their statements would cause Plaintiff.

65. As a direct and proximate result of MR. BARRON and MR. COSIO-BARRON's statements, Plaintiff has been damaged in an amount to be proven at trial. Defendants' conduct and actions were done with malice, fraud, or oppression, and reckless disregard of Plaintiff's rights. Defendants engaged in offensive conduct despite their awareness of the effect on Plaintiff. As a result of these and other actions, Plaintiff is entitled to punitive and exemplary damages.

SEVENTH CAUSE OF ACTION

(VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ. AGAINST ALL DEFENDANTS AND DOES)

66. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 65, as though fully set forth herein.

67. Plaintiff is informed and believe that Defendants engaged in acts of fraudulent business practices and untrue or misleading advertisements in violation of numerous provisions under federal and state statutory and common law, including but not limited to the Unfair Competition Law

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1 (California Business & Professions Code §§ 17200 et seq. and 17500 et seq.) and the Consumer Legal
 2 Remedies Act (Civil Code § 1770 et seq.)

3 68. California Business and Professions Code §17200 et seq., provides that unfair
 4 competition shall mean and include "all unlawful, unfair or fraudulent business act or practices and
 5 unfair, deceptive, untrue or misleading advertising."

6 69. Defendants fall within the definition of "person" as set forth at Business & Professions
 7 Code § 17203 and §17506

8 70. Plaintiff is informed, believes, and thereon alleges that Defendants have maintained
 9 fraudulent business practices by engaging in practices including but not limited to the following:
 10 falsely stating that Defendants intend to pay for legal services, falsely stating that Defendants have the
 11 ability to pay for legal services, and continuing to misrepresent their intention and ability to pay for
 12 legal services over a one year period in order to induce their attorneys to continue to provide them with
 13 legal representation. Plaintiff is not Defendants only victims. Defendants have engaged in similar
 14 conduct with at least three other law firms within the past two years.

15 71. Plaintiff is informed, believes, and thereupon alleges that as a direct and proximate
 16 result of Defendants' unfair and fraudulent business practices, Defendants have received and will
 17 continue to receive ill-gotten gains. Plaintiff is therefore entitled to disgorgement of all monies saved
 18 as a result of Defendants' fraud.

19 72. Defendants' conduct and actions were done with malice, fraud, or oppression, and
 20 reckless disregard of Plaintiff's rights. Defendants engaged in offensive conduct despite their
 21 awareness of the effect on Plaintiff. As a result of these and other actions, Plaintiff is entitled to
 22 punitive and exemplary damages.

23 EIGHTH CAUSE OF ACTION

24 (OPEN BOOK ACCOUNTING AGAINST ALL DEFENDANTS AND DOES)

25 73. Plaintiff repeats, re-alleges, and incorporates by this reference Paragraphs 1 through 72,
 26 as though fully set forth herein.

27 74. Plaintiff has received some monetary payment for the legal services Plaintiff provided
 28 to Defendants.

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75. Plaintiff is informed and believes and thereon alleges that Defendants has provided Plaintiff with some money as payment for legal services rendered, but not the entire remaining balance due.

76. Plaintiff is informed, believes, and thereon alleges that Plaintiff is entitled to an open book accounting for the monies owed to Plaintiff by Defendants.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For general and compensatory damages, including prejudgment interest, in accordance with proof at time of trial on the First and Second Causes of Action;
2. For quantum meruit on the Third and Fourth Causes of Action;
3. For general and punitive damages to be determined at trial on the Fifth and Sixth Causes of Action;
3. For restitution and disgorgement, injunctive relief, and any further relief the court deems just and proper on the Seventh Cause of Action;
4. For an open book accounting, general damages according to proof, and any further relief the court deems just and proper on the Eighth Cause of Action;
5. For Plaintiff's costs and attorneys fees;
6. For such other and further relief as the Court may deem just and proper.

DATED: February 18, 2005

KEITH A FINK & ASSOCIATES

By

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 Sarah L. Hernandez
 Jack Risenbark
 Attorneys for Plaintiff
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 & ASSOCIATES